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MICROSOFT CORPORATION

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

EPIC GAMES, INC.,

Plaintiff, Counter-
Defendant

v.

APPLE, INC.,

Defendant,
Counterclaimant.

Case No. 4:20-CV-05640-YGR

**DECLARATION OF DAVID P.
CHIAPPETTA IN SUPPORT OF APPLE,
INC.'S ADMINISTRATIVE MOTION TO
FILE UNDER SEAL FINAL PROPOSED
FINDINGS OF FACTS AND
CONCLUSIONS OF LAW (ECF NO. 778)**

Pursuant to Civil Local Rule 79-5, I declare as follows:

1. I am a partner at the law firm Perkins Coie LLP and counsel to Microsoft Corporation (“Microsoft”), which is not a party to the above-captioned case. I am a member in good standing of the State Bar of California. The facts stated in this declaration are based on my own personal knowledge and, if called as a witness, I could and would testify to those facts.

2. I submit this declaration in response to Defendant Apple’s Administrative Motion to File Under Seal Final Proposed Findings of Facts and Conclusions of Law (ECF No. 778).

6. Although there is a presumption of public access to judicial records, that right is not absolute, and a court may seal documents offered in evidence at a trial upon showing compelling reasons to keep certain information confidential. *Foltz v. State Farm Mut. Auto. Ins. Co.*, 330 F.3d 1122, 1135 (9th Cir. 2003); *see also* Civil L.R. 79-5(b). A compelling reason to seal judicial records exists when those records might “become a vehicle for improper purposes,” such as use of the records to release trade secrets or confidential business information that might harm a litigant’s competitive standing. *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978) (“[C]ourts have refused to permit their files to serve . . . as sources of business information that might harm a [third-party’s] competitive standing.” (citations omitted)).

7. Confidential business information in the form of “license agreements, financial terms, details of confidential licensing negotiations, and business strategies” satisfy the compelling reasons standard. *Guzman v. Chipotle Mexican Grill, Inc.*, No. 17-cv-02606-HSG, 2020 WL 1171112, *1 (N.D. Cal. Mar. 11, 2020) (citation and quotations omitted). As do sales data documents that reveal a company’s “sales growth and decline.” *Murphy v. Kavo Am. Corp.*, No. CV 11 0410 YGR, 2012 WL 1497489, *2 (N.D. Cal. Apr. 27, 2012) (Gonzalez Rogers, J.). Further, there is also a compelling reason to file an exhibit under seal where that exhibit divulges confidential business information unrelated to the public’s understanding of the judicial proceeding in which the exhibit is presented. *Chipotle Mexican Grill*, 2020 WL 1171112, at *2. Microsoft has narrowly tailored its sealing requests, and the portions of the trial exhibits that Microsoft seeks to keep under seal are tangential to this litigation.

8. Microsoft seeks to seal the following portions of Apple's Final Proposed Findings of Fact and Conclusions of Law submitted to the Court:

Document or Portion of Document to Be Sealed	Evidence Offered in Support of Sealing
Paragraph 363 of Apple's Final Proposed Findings of Fact and Paragraph 42 of Apple's Final Proposed Conclusions of Law reflect financial information Dr. Hitt derived from non-public confidential financial data in DX-3918, which the court has sealed.	Declaration of Stephanie Louie dated April 29, 2021 (ECF No. 551-15) ("Louie Decl.") ¶¶ 1-8.
Paragraph 355.2 of Apple's Final Proposed Findings of Fact reflects non-public terms of a negotiated agreement between Microsoft and Epic from a sealed portion of DX-3437.002.	Declaration of Cynthia Williams dated April 30, 2021 (ECF No. 551-17) ("Williams Decl." ¶¶ 19-21.

9. The figures reflected in Paragraph 363 of Apple's Proposed Final Findings of Fact and Paragraph 42 of Apple's Conclusions of Law reflect non-public sales and financial information that are derived from DX-3918, a sealed document that contains Microsoft's confidential information. In Pretrial Order No. 9 Re: Additional Third Party Administrative Motions to Seal (ECF No. 564), the Court granted Microsoft's Administrative Motion to Seal Portions of DX-3918 (*see* ECF No. 551) because that document reflects highly sensitive year-over-year sales and revenue data about Minecraft by platform and purchase type. Louie Decl. ¶¶ 6-7. Such information is not publicly disclosed and only shared with a select group of individuals at Microsoft on a need-to-know basis. *Id.* ¶ 5. Paragraph 363 of Apple's Final Proposed Findings of Fact and Paragraph 42 of Apple's Final Proposed Conclusions of Law reflect figures derived from the same information in sealed portions of DX-3918. If disclosed, Microsoft's competitors and external partners could use this information to disadvantage Minecraft in licensing, platform leverage, and partner negotiations. *Id.* ¶ 8.

10. The information reflected in Paragraph 355.2 of Apple's Final Proposed Findings of Fact reflect confidential sealed portions of DX-3437, Microsoft's negotiated provisions of Title Licensing Agreement with Epic. Paragraph 355.2 reflects highly sensitive negotiated terms with Epic, including terms relating to Microsoft's strategy, how it differentiates itself from

1 competitors, and specific pricing information. Williams Decl. ¶¶ 19-21. If disclosed, Microsoft's
2 competitors and external partners could use this information to materially disadvantage Microsoft
3 and its player base. *Id.* Revealing such specific customer information would also impact
4 Microsoft's relationships with customers. *Id.* ¶ 21.

5 11. For the foregoing reasons, Microsoft respectfully requests that the Court seal
6 portions of Paragraphs 355.2 and 363 of Apple's Final Proposed Findings of Fact and Paragraph
7 42 of Apple's Proposed Final Conclusions of Law.

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9 I declare under penalty of perjury under the laws of the United States that the foregoing is
10 true and correct.

11 Executed this 1st day of June 2021 in Fresno, California.

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13 /s/ David Chiappetta
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